IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

OP.No. 4455 of 1997(E)

PETITIONER:

TRAVANCORE CEMENTS LTD.,
NATTAKOM, KOTTAYAM.
REPRESENTED BY ITS MANAGING DIRECTOR EAPEN JOSEPH.

BY ADV. SRI.JOSEPH MARKOSE,
THOMAS VELLAPALLY

RESPONDENTS:
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1. THE DIVISIONAL FOREST OFFICER,
DIVISIONAL FOREST OFFICE,
TIMBER SALES DIVISION, KOZHIKKODE.

2. THE CHIEF CONSERVATOR OF FORESTS (PROTECTION),
VAZHUTHACAUD, THIRUVANANTHAPURAM.

3. THE DEPUTY TAHSILDAR (RR),
KOTTAYAM.

*4. THE CHIEF SECRETARY, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

*(IMPLEADED AS ADDITIONAL 4TH RESPONDENT AS PER JUDGMENT DATED 13/11/2007)

BY ADV. SHRI.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON 12/11/2007 DELIVERED THE FOLLOWING:

OP NO. 4455/1997

ORDER ON CMP NO. 8197/1997 IN OP NO. 4455/1997.

DISMISSED.

13/11/2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF LETTER DATED 30/04/93 FROM THE PETITIONER TO THE 1ST RESPONDENT.

P2 : COPY OF THE INVOICE NO. 1/93-94 ALONG WITH CHALLAN ATTACHED THERETO.

P3 : COPY OF LETTER DATED 22/04/93 OF THE 1ST RESPONDENT FORWARDING EXT.P2.

P4 : COPY OF ENQUIRY DATED 19/05/1993 ISSUED BY THE PETITIONER.

P5 : COPY OF ORDER DATED 01/07/93 ISSUED BY THE PETITIONER TO M/S.PJ TIMBERS.

P6 : COPY OF LETTER DATED 15/07/93 FROM THE PETITIONER TO THE 1ST RESPONDENT.

P7 : COPY OF LETTER DATED 24/07/93 FROM THE 1ST RESPONDENT TO THE PETITIONER.

P8 : COPY OF REPLY FROM THE PETITIONER to the 1ST RESPONDENT DATED 20/08/93.

P9 : COPY OF LETTER DATED 26/08/93 FROM THE 1ST RESPONDENT to the PETITIONER ALONG WITH AUCTION NOTIFICATION.

P10 : COPY OF LETTER DATED 27/09/93 RECEIVED BY THE PETITIONER FROM THE 2ND RESPONDENT.

P11 : COPY OF TELEGRAM DATED 07/10/93 FROM THE PETITIONER TO THE 2ND RESPONDENT.

P12 : COPY OF LETTER DATED 26/10/95 OF THE 1ST RESPONDENT ALONG WITH CHALAN.

P13 : COPY OF REVENUE RECOVERY NOTICE DATED 18/02/1997 OF THE 3RD RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 4455 of 1997

Dated, this the 13th day of November, 2007

J U D G M E N T

The Chief Secretary, Government of Kerala, Thiruvananthapuram is impleaded as additional respondent in the original petition.

2. Petitioner, a Government of Kerala company, is challenging revenue recovery proceedings initiated for recovery of loss suffered by the Government on account of alleged breach of contract in regard to purchase of timber by the petitioner company. Even though original petition is pending for the last 10 years and this Court granted stay on condition of payment of an amount of Rs.20,000/-, no counter affidavit is filed even as of now.

3. I do not find any justification to keep the original petition pending for more than one reason. In the first place, a dispute of this nature should not have arisen between a fully owned Government company and a Government Department because both should work and act mutually complementary to protect the public interest. From the original petition, I find, the transactions pertain to alleged purchase of teak wood by the petitioner company from

the Forest Department, and the petitioner appears to have given up the purchase offer on account of alleged high rate quoted for the teak wood by the Forest Department. The company purchased teak wood from the private dealer on the ground that the same was available with private dealers at cheaper rate. I am unable to appreciate the genuineness of the allegation by the company because most of the teak woods are sourced from Forest Depots and private traders are making profit by purchasing, and selling, of timber from forest depots. When a Government company purchases timber from a Government depot, the price demanded should not have been more than the price at which it is offered by private parties. Therefore, logically, the company's claim is unbelievable. However, it may be a case of forest officials charging exorbitant rates on the Government company, only to dissuade them so that timber is available for sale to traders.

4. In any case, both the parties cannot escape liability for the breach of contract because it is either on account of the hostile attitude of the Forest Department or on account of the company's desire to help private party. Both the Forest Department and the petitioner Company do not have a reputation for honest or proper

management. In any case, there is no scope for this Court deciding as to whether the liability is on the Government Department or on the Company promoted by Government. Therefore, this original petition is disposed of directing the Chief Secretary to Government, Government of Kerala to conduct an enquiry and fix the liability, and proceed for recovery against the Government Company, only if the same is justified. However, I make it clear that the Chief Secretary should keep in mind the claim amount and that any enquiry or adjudication should not lead to further loss to the State.

Registry is directed to forward a copy of this judgment to the Chief Secretary to the Government.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg